UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/890,486	12/28/2001	Wilhelmus Johannes Everardus Van Den Dungen	3135-011126	1769

34082 7590 02/25/2004

ZARLEY LAW FIRM P.L.C.
CAPITAL SQUARE
400 LOCUST, SUITE 200
DES MOINES, IA 50309-2350

EXAMINER	
BECKER, DREW E	

ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 02/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/890,486	VAN DEN DUNGEN ET AL.	
	Examiner	Art Unit	
	Drew E Becker	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *12 January 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *31-57* is/are pending in the application.

4a) Of the above claim(s) *31-46* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *47-57* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *4/10/02, 1/14/02*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. It should be noted that the pre-amendment of December 28, 2001 canceled claims 1-30 and entered new claims 31-47. Therefore, the restriction shall be applied to these claims, with claims 31-46 representing group I, and claims 47-57 representing group II.

Election/Restrictions

2. Applicant's election with traverse of group II in the response of January 12, 2004 is acknowledged. The traversal is on the ground(s) that the method of group II requires the apparatus of group I. This is not found persuasive because the method of group II does not include the transporting device with separate carriers, nor the separating device. The method of group II can be practiced by another and materially different apparatus, for instance a conveyor belt without separate carriers.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 47-57 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 47 recites the broad recitation "a co-extruded food product", and the claim also recites "in particular sausage" which is the narrower statement of the range/limitation.

6. Claim 57 provides for the use of "dry collagen", but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claim 57 is rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under

35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd.* v. *Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

8. Claims 47-48 and 52-55 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 99/13729 in view of WO 93/12660.

WO 99/13729 teaches a method of making sausages by co-extruding meat and a skin (page 11, lines 32-38), separating the sausage string into separate units (page 12, line 5), then subjecting the units to a coagulation treatment with liquid smoke (page 12, line 36), WO 99/13729 does not recite the skin being 8-10% collagen and a pre-coagulation treatment. WO 93/12660 teaches a method of making sausage by co-extruding meat and collagen (page 3, lines 3-5), the use of 4-10% collagen (page 6, line 4), and coagulation prior to separation (page 3, line 12 to page 5, line 14) . It would have been obvious to one of ordinary skill in the art to incorporate the collagen and pre-treatment of WO 93/12660 into the invention of WO 99/13729 since both are directed to sausage making, since WO 99/13729 already included co-extrusion (page 11, lines 32-38) and coagulation (page 12, line 36), since collagen was a commonly used material for sausage skin as shown by WO 93/12660, and since the pre-treatment of WO 93/12660

would have further strengthened the sausage of WO 99/13729 and thus prevented possible damages during processing.

9. Claims 49-51 and 57 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 99/13729, in view of WO 93/12660, as applied above, and further in view of Henderson et al [Pat. No. 3,551,535].

WO 99/13729 and WO 93/12660 teach the above mentioned concepts. WO 99/13729 and WO 93/12660 do not teach the use of dry, fibrous collagen. Henderson et al teach a method of making sausage skins by use of dry, fibrous collagen (column 6, Example I). It would have been obvious to one of ordinary skill in the art to incorporate the dry, fibrous collagen of Henderson et al into the invention of WO 99/13729, in view of WO 93/12660, since all are directed to sausage making, since WO 99/13729 already included co-extrusion of a skin (page 11, lines 32-38), since WO 93/12660 already included co-extrusion of collagen with additives such as coagulants and cross-linking agents (page 3, line 1 to page 5, line 15), and since the dry collagen of Henderson et al prevented air pockets and provided improved homogenization as compared to conventional collagen skins (column 1, lines 30-73).

10. Claim 56 is rejected under 35 U.S.C. 103(a) as being unpatentable over WO 99/13729, in view of WO 93/12660, as applied above, and further in view of Kobussen et al [Pat. No. 6,054,155].

WO 99/13729 and WO 93/12660 teach the above mentioned concepts. WO 99/13729 and WO 93/12660 do not teach the use of dipotassium phosphate. Kobussen et al teach a method of making sausage by using dipotassium phosphate as a coagulant

(column 3, line 20). It would have been obvious to one of ordinary skill in the art to incorporate the dipotassium phosphate of Kobussen et al into the invention of WO 99/13729, in view of WO 93/12660, since all are directed to sausage making, since WO 99/13729 already included coagulation with liquid smoke (page 12, line 360, and since dipotassium phosphate was a commonly used coagulant in sausage making as shown by Kobussen et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Thur. 8am-5pm and every other Fri. 8am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Drew E Becker
Primary Examiner
Art Unit 1761
2-18-04